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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/688,488  | 10/16/2000  | Mario J. Restive     | 86165.000030        | 9902             |
| 23387   | 7590        | 10/06/2003           | EXAMINER            |                  |
| Stephen B. Salai, Esq.<br>Harter, Secrest & Emery LLP<br>1600 Bausch & Lomb Place<br>Rochester, NY 14604-2711 |             |                      | HWU, DAVIS D        |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3752                |                  |

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/688,488

Applicant(s)

RESTIVE, MARIO J.

Examiner

Davis Hwu

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**Response to Amendment**

1. Applicant's amendment of July 03, 2003 is acknowledged and entered as paper number 6.
2. Applicant's remarks have been fully considered, however, they are not found to be persuasive.
3. All of the appropriate 35 USC paragraphs can be found in the office action of February 03, 2003 and will not be repeated herein.

***Claim Rejections - 35 USC § 103***

4. Claims 1-3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a sprayer for releasably engaging a container of liquid, the container including an outlet valve 36, the sprayer comprising:

- a venturi 84; and
- a plunger 72 fluidly connected to the venturi and movable between a closed position and an activating position in response to a flow through the venturi (Column 5, lines 27-31), wherein the plunger is fluidly connected to the venturi to expose a negative pressure to the plunger in response to the flow through the venturi since plunger 70 is being moved by suction.

Although element 72 is not called a plunger, it is considered to be a plunger since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect. Resistance to flow by the venturi creates a positive pressure before the venturi which exerts a positive pressure on the plunger to open the plunger and the plunger is fluidly

Art Unit: 3752

connected to the venturi to expose a negative pressure to the plunger in response to a flow through the venturi via the spring biasing the plunger 72 back to a closed position.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a spray assembly connectable to a container having an actuable outlet valve, comprising a venturi and an actuator 74 connected to the venturi to actuate the outlet valve in response to a flow through the venturi. Although element 72 is not called a plunger, it is considered to be a plunger since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a sprayer assembly for releasably engaging an additive source having an outlet valve, the assembly comprising a housing having a venturi, the housing configured to releasably engage a source of pressurized carrier liquid for generating a flow through the venturi and an actuator 72 moveably connected to the housing between an actuating position and a closed position. Although element 72 is not called an actuator, it is considered to be an actuator since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a spray assembly for engaging an additive source comprising a housing having a venturi 84 configured to generate sufficiently reduced pressure to entrain an additive at a flow rate through the venturi and a plunger 72

Art Unit: 3752

moveably connected to the housing between a first position and a second position in response to a flow through the venturi. The 1.5 gpm would have been an obvious matter of design choice based on the operating requirements of the device.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gosselin et al.

The patent to Gosselin et al. discloses a first embodiment of a sprayer assembly comprising:

- a venturi 496;
- a plunger fluidly connected 464 fluidly connected to the venturi and moveable between an open position closed position, the plunger including a passageway 458 therethrough.

Gosselin et al. also discloses a check valve 389 in another of their embodiments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the first embodiment of Gosselin et al. by incorporating a check valve into the first embodiment as already taught by Gosselin et al. to prevent backflow.

### ***Response to Arguments***

9. Applicant's remarks filed 03 July 2003 have been fully considered but they are not persuasive. Applicant's remark that Allison does not disclose the container having an outlet valve and a plunger fluidly connected to the venturi has fully been considered. Claim 1, however, does not specifically recite an outlet valve and a plunger fluidly connected to the venturi in that claim 1 recites an improved sprayer engaging a

Art Unit: 3752

container and the container including an outlet valve in which the improvement comprises the venturi and the plunger as recited. This could be broadly interpreted as the outlet valve itself comprising the plunger as recited, which is disclosed by the Allison reference. Therefore, all of the rejections stand as previously presented in the office action of February 3, 2003.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703)308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 3752

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.

A handwritten signature in black ink, appearing to be 'Davis Hwu', written in a cursive style.

Davis Hwu